IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/07/2003

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.752 OF 1997

1. Ayyavoo @ Ayyasamy

2. Senthil Kumar .. Appellants

-Vs-

State
by S.I. Of Police
Erode Taluk Police Station
(Cr. No.200/95) .. Respondent

This criminal appeal is preferred under Section 374 of Cr.P.C. against the conviction and sentence passed by the learned I Addl. District Judge-cum-Chief Judicial Magistrate, Erode, Erode District dated 27.3.1996 made in C.C.No.108 of 1995.

For Appellant : Mr.B.Kumarasamy

For Respondent : MR.O.Srinath,
Govt. Advocate(Crl. Side)

:JUDGMENT

The appellants, who were ranked as A1 and A3 stood charged under Section 326, 506(ii) and 323 I.P.C. along with A2 and A1 was found guilty under Section 323 I.P.C. and sentenced to pay a fine of Rs.300/-, in default one month S.I., while A3 was found guilty under Section 506 (ii) and sentenced to undergo R.I. for 3 months along with a fine of Rs.500/- in default 2 weeks R.I. and also found guilty under Section 326 I.P.C and sentenced to undergo 24 months R.I. along with a fine of Rs.1000/- in default 6 months R.I., have brought forth this appeal. During the pendency of this appeal, the first appellant/A1 died, and thus, this appeal becomes abated insofar as A1 is concerned. The appeal has been prosecuted by A3. Hence, the scope of the appeal is limited to the conviction and sentence in respect of A3, who is the second appellant herein.

2. The short facts necessary for the disposal of this appeal can be stated as follows:

a) On 19.04.1995 at about 7.30 p.m. in Kallagoundanpalayam Sadayankadu, the accused 1 to 3 with an intention to cause injuries to P.W.1, Manickam and P.W.2 Ammani assembled on the south side of the house of P.w.1.

There was a wordy quarrel regarding burning of light and following the same, both A1 and A2 assaulted P.W.2 with stick on the back side of the neck and caused minor injuries. The third accused not only criminally intimidated them to cause death, but also caused injury on the left side neck of P.W.1 with "Koduval". At that time, he came to prevent the assault on his wife, P.W.2. A3 caused grievous injuries on the neck of P.W.1.

b) P.Ws.1 and 2, who were injured, were taken to Government Hospital, Erode where they were medically examined by P.W.4 Doctor Thangaraj. P.W.4 has issued Ex.P.2 Accident Register in respect of the injuries found on P.W.1. At the time of his evidence, P.W.4 has deposed that the injuries would have been caused by "Koduval". P.W.4 has also examined P.w.2 also and has issued Ex.P.3 Accident register and simple injuries were noticed.

c) P.W.5 Sengan, Head Constable attached to Erode Government Hospital Out Post Police Station, on receipt of intimation from the hospital, proceeded to the hospital, recorded the statement of P.W.1, obtained Ex.P.1 complaint and forwarded the same through Police Constable to Erode Taluk Police Station for further action. P.W.6 Senthurpandian, Head constable attached to Erode Taluk Police Station, on the strength of Ex.P.1 registered a case in Crime No.200 of 1995 under Sections 326 and 323 I.P.C. P.W.6 took up investigation, proceeded to the site of occurrence and prepared observation mahazar Ex.P.7 and Ex.P.6 rough sketch. He examined P.Ws.1 to 3 and P.W.4 and he submitted all the records to the Sub Inspector of Police, who received the wound certificate and laid a charge sheet under Sections 326, 323 and 506(ii) I.P.C. on 25.11.1995.

3. In order to prove the charges levelled against all the three accused, the prosecution examined 6 witnesses and marked 7 exhibits. No M.Os were marked. On completion of evidence on the side of the prosecution, the accused were questioned under Section 313 of Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses, which they flatly denied as false. After consideration of the rival submissions and scrutiny of the materials available, the trial court found A1 guilty under Section 323 I.P.C. and A3 was found guilty under Sections 326 and 506(ii) and awarded punishment as stated above, while A2 was acquitted of the charges levelled against him. Though the appeal was filed by A1 and A3, during the pendency of the appeal A1 died, and hence, this appeal is prosecuted by A3.

4. Advancing arguments on behalf of appellants, the learned counsel made the following submissions:

The prosecution has not examined any independent witness. All the witnesses examined by the prosecution, namely, P.Ws.1 to 3, were close relatives. If their evidence is carefully scrutinised, there are lots of discrepancies and inconsistencies noticed, and hence the lower court should have rejected the prosecution case. The medical evidence has not supported the prosecution case. The injuries, which were caused at the time of transaction on A1, remained unexplained by the prosecution, which would be fatal to the prosecution case. Hence, the judgment of the lower court has got to be set aside and A3 has got to be acquitted.

5. Opposing strongly the contentions of the appellants' side, the learned Government Advocate (Criminal side) would submit that the lower court has well considered the evidence available and exercised careful scrutiny. It is true that they are relatives, but it remains to be stated that they were injured and they were examined medically. The medical evidence has fully

corroborated the evidence of injured witnesses, and hence, it is a case where no flaw was found in the entire process of investigation. The alleged injuries of A1 were simple and superficial, which were taken place in the course of transaction, and hence, no explanation was tendered by the prosecution to the said fact. Therefore, the judgment of the lower court has got to be affirmed.

6. This Court paid its full attention on the rival submissions made and scrutinised the materials available. The gist of the prosecution case was that on 19.4.1995 at about 7.30 p.m in Kallagoundanpalayam Sadayankadu, due to a wordy quarrel in respect of the burning light, A1 and A2 assaulted P.W.2 with stick and the same was questioned by her husband P.W.1. A3 not only criminally intimidated the witnesses to cause death, but attacked P.W.1 with "Koduval" on the left side of his neck and caused grievous injuries. P.Ws.1 and 2 have given a clear narration about the entire incident and the overt act by A1 and A3 at the time of occurrence. It is true that the witnesses examined by the prosecution were close relatives, but it cannot be a sole ground to reject their testimony. It remains to be stated that they were injured. Their evidence, if a careful scrutiny is exercised on it, inspires the confidence of the Court. P.Ws.1 and 2 were medically examined by P.W.4. P.W.4 has issued Ex.P.2 accident register in respect of the injuries found on P.W.1 and narrated the injuries as follows:

1. Incised wound left side lower aspect neck 10 x 5 x 7 cms. Exposing bone and muscles. Edges clean.
2. Incised wound 10 x 1 x 1 cms right palm. Edges clean.

There is evidence to show that he was inpatient for a period of 41 days. From the Doctor's evidence it would be clear that the injury that was caused to P.W.2 by A3 was grievous one. The evidence given by P.Ws.1 and 2 is fully corroborated by the medical evidence, and thus, the lower court was perfectly correct in recording conviction against A3 under Section 326 I.P.C. From the evidence of P.Ws.1 and 2 it would be abundantly clear that at the time of occurrence A3 has uttered the following words:

"eP ,Uf;Fk; tiu vq;fSf;F epk;kjp fpilahJ. cd;id jPh;j;Jf; fl;odhy; vy;yhk; rhpahfptpLk;"

and thereby criminally intimidated which warrants punishment under Section 506(ii) I.P.C. No material is available to show that the injury caused at the time of occurrence on A1 was not a superficial one and it remains to be explained, and hence, the explanation tendered by the prosecution that if the injury caused was superficial, it need not be explained has got to be accepted. Apart from that no material is placed in the hands of the Court by the appellants' side to take otherwise in order to reject the contention put forth by the prosecution side, and thus, the lower court has found A3 guilty under Sections 3 26 and 506(ii) I.P.C. and the same does not require any interference by this court.

7. Coming to the question of punishment, the lower court has found A3 under Section 326 I.P.C. and sentenced to undergo R.I for two years along with a fine of Rs.1000/- in default to undergo R.I for six months and A3 was also found guilty under Section 506(ii) and sentenced to undergo R.I for three months and a fine of Rs.500/-, in default, to undergo R.I for two weeks. It is brought to the notice of the court by the learned counsel for the appellants that they are close relatives and they compromised the matter. Taking into consideration of the facts and circumstances of the case and the

nature of injury that was caused, the court is of the considered view that the sentence awarded by the lower court under Section 326 I.P.C to A3 has got to be reduced to 18 months R.I, which would meet the ends of justice. Therefore, the sentence of two years under Section 326 I.P.C. imposed by the lower court to A3 is reduced to 18 months R.I. In other respect, the judgment of the lower court is confirmed. With the above modification, the criminal appeal is dismissed. The Sessions Judge shall take steps to commit the Accused No.3 to prison, if he is on bail, to undergo the remaining period of sentence. The sentence already undergone by A3 has got to be set off.

Index : Yes
Internet : Yes

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To
1. The I Addl. District Judge-cum-Chief Judicial Magistrate,
Erode
2. The Principal District Judge, Erode
3. The Public Prosecutor, High Court, Madras
4. Mr.O.Srinath, Govt. Advocate(Crl. Side),
High Court, Madras
5. The Dy. Inspector General of Police, Chennai-4
6. The Sub Inspector of Police, Erode Taluk Police Station,
Erode